

**LAKES MANAGEMENT ADVISORY COMMITTEE**  
NH Lakes Management and Protection Program



New Hampshire Department of Environmental Services  
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**MEETING MINUTES**  
**November 21, 2008**  
**DES Conference Room**  
**9:00 a.m. – 12:30 p.m.**

**Members present:**

Phil O'Brien, Ph.D., Chair  
Jennifer Czysz  
Jim Haney, Ph.D.  
Diane Hanley  
Mitchell Kalter  
Larry Sunderland, Vice Chair  
Dennis Pavlicek  
Bo Quackenbos  
Stephen Perry

**Representing:**

NH Lakes Association  
Director Rep, Office of Energy & Planning  
Scientific Community, UNH  
Conservation Commissions  
NH Fish & Game Commission  
Conservation Community  
Municipal Official  
NH Association of Realtors  
Ex. Dir. Rep, F & G

**Term:**

August 1, 2009  
Indefinite  
August 22, 2010  
August 22, 2010  
August 22, 2009  
September 19, 2010  
August 1, 2009  
June 27, 2011  
Indefinite

**Members not present:**

Wendell Berry  
Shari Colby  
Mark Gallagher  
Mark Hemmerlein  
Fred Murphy  
Michele L. Tremblay  
Ken P. Wilson  
Vacant  
Vacant

NH Business and Industry Assn  
Commissioner Rep, DRED  
Commissioner Rep, DOS  
Commissioner Rep, DOT  
Planning Board  
State Conservation Committee  
NH Marine Dealers Association  
Tourism Industry  
Commissioner, Dept. of Agr., Markets & Food

July 8, 2010  
Indefinite  
Indefinite  
Indefinite  
August 1, 2011  
August 1, 2009  
August 22, 2008  
Expired  
Indefinite

**Staff Present**

Jacquie Colburn  
Jenn Rowden  
Jody Connor  
Darlene Forst  
Grant Mecozzi  
Carolyn Guerdet

Lakes Coordinator, Watershed Management Bureau (WMB)  
P.T. Asst. Planner, WMB  
Director, Limnology Center, WMB  
Shoreline Section Supervisor, Wetlands Bureau  
Shoreline Specialist, Wetlands Bureau  
Admin. Asst., Water Division

**Guests:**

Joe Farrelly  
Amanda Murby

NH Lakes Association  
UNH

**I. Opening**

Chairman O'Brien called the meeting to order at 9:00 am. Chairman O'Brien introduced the new member to the LMAC, Mike Racine, NH Fish and Game. Committee members and guests introduced themselves.

**Minutes**

- ***Larry Sunderland made a motion to approve the September 26, 2008 minutes as modified, second by Bo Quackenbos. Motion was passed unanimously.***

Fred Murphy has been reappointed until 2011 and Ken Wilson is seeking reappointment. A new committee member list was distributed. Appointments for the Department of Agriculture and the Travel Council are still being sought.

### **Future Meeting Schedule**

Jacque reminded the committee that the LMAC is moving to an every-other-month schedule for meetings. The meeting in May is the 15<sup>th</sup>, not the 16<sup>th</sup> as indicated on the handout. The January meeting will be a joint meeting with the RMAC on Friday, January 9<sup>th</sup>. The Commissioner will join this meeting to talk about the Department's Strategic Plan and the Sustainability Initiative. The LMAC and RMAC will be meeting separately then come together for the presentations.

### **Budget**

The Governor will announce the proposed budget cuts today; it is anticipated that there will be no travel money available in the future.

## **II. Key Discussion Issues**

### **Updates:**

#### **1) Ossipee Lake Natural Area (OLNA)**

Diane Hanley reported that the Ossipee Working Group met last Friday. Three alternatives regarding the future of the Natural Area were suggested:

- 1) Closing off the Natural Area completely.
- 2) Allowing access to the entire shoreline, due to no funding to control the Area.
- 3) Designate a portion of the Natural Area shoreline for public use.

Alternative 3 has been chosen at this point by DRED. Don Kent noted that if this doesn't work they may have to close the entire area. After a year of local discussion it seems that people are working together. The shoreline areas that are most disturbed will be the designated area for public use. The areas that have sensitive species will be fenced off. The usable area will be extended to 1800 ft of shoreline. Also proposed was reducing the unofficial mooring that occurs along the Natural Area shoreline and Marine Patrol believes they can help enforce that. The door is still open for some type of restroom facility there. A pump out facility could be installed on the lake with the possible use of a floating toilet or a Clivus toilet, which is a composting toilet.

Water issues were controlling the number of boats and the disturbance of the sediment. They discussed restricting the rafting by boaters. No more than 2 can tie up together with a specified distance between boats.

It was noted by the Working Group members that a lot of the damage happens at night. Don Kent explained that the plan is to have a resolution in place by the end of April 2009. The next meeting of the Working Group is scheduled for January. The group felt that the renters are the users that need to be educated about this land and they discussed developing a brochure to explain why it needs to be protected. The meeting ended with a sign-up for specific duties. DRED needs to clarify what their 'use' descriptions actually mean.

Jacque explained that she had received an email from David Smith, president of the Ossipee Lake Alliance, thanking the LMAC and Lakes Program for their visit to the Natural Area in 2007 as it brought attention to a higher level.

#### **2) Sustainability Initiative (S.I.) – Jenn Rowden**

Jenn reported the work continues on the Sustainability Initiative (SI) and work has begun on carrying capacity. Several recommendations were sent to the carrying capacity subcommittee for review and the subcommittee is meeting today. The discussion of the subcommittee will focus on whether or not carrying capacity should actually be defined in the lakes statutes. It currently is not. Enforcement and implementation would be easier if there was a definition. Squam Lake is currently being worked on as a possible pilot project. If a definition is established how it would be enforced is a fundamental question. Updates will continue as the subcommittee progresses.

Initial recommendation updates for the SI issue of *data collection and management*: Money has been approved for 7 of 15 stream gages. An additional 8 gages will be installed next year. A request has been made for an additional 15 gages. Watershed report cards are available online; the report cards take the 303(d) list of impaired waters in the State and allows online users to access the information on a watershed basis. The WMB is also developing an accessible online documents library for a repository of DES reports.

For the SI issue regarding the *lack of coordinated watershed approach*:  
NH Water Resources Primer is being finished and is expected out in December.

For the SI issue regarding *controlling exotic aquatic species*:  
Looking for funding sources; two possible pieces of legislation to increase boat registration fees and/or implement a type of environmental fee for shorefront land owners. They are working towards reducing herbicides as the method of control by putting it as a goal in the Exotic Species Program's biennial report

For the SI issue regarding *consumptive use of surface and groundwater*:  
The instream flow program is moving forward with the rivers statute.

Jacque noted that prior to the January 9<sup>th</sup> meeting the Sustainability Initiative Document will be sent out to everyone. This along with the Department's Strategic plan is what the Commissioner will be talking about. Several of the S.I. recommendations have been considered to be included in the Strategic plan. The Commissioner has requested that the LMAC and RMAC continue to work on several of the major goals in the Strategic Plan. The two are: 1) climate change and preventing future impacts in the State, and 2) insuring that NH is improving its environment and using data driven results. He will be asking, what is the most useful information for LMAC/RMAC members, the public, and is the appropriate data being collected? Also how should the information be presented so that is useful for the public. He also wants to know when a critical threshold is reached, what activities will trip action? And what would that action plan actually be?

### 3) **Guidelines for Coordinated Lake Management and Shoreland Protection Plans** – Jacquie Colburn

Jacque reported that all hearings have been completed in the 5 Councilor districts. The Hippo Press did an article relative to the document. After the September meeting Jacquie, Laura and Phil sat down with June Fichter, Executive Director of the Lake Sunapee Protective Association (LSPA). They have developed a Lakes Management document for the Sunapee watershed and she shared their experiences.

The Watershed Conference was held last Saturday and one workshop was on the Comprehensive Lakes Inventory (CLI).

#### Next Steps:

The document is in its final stages of revision. A follow-up letter to the five Executive Councilors will be sent per Phil's request. Jacquie reviewed the changes that have been made to the document. Jim Haney suggested making the information part of a larger data base. Outcomes of actions upon doing the study were then discussed. Identifying where the problems are, getting local groups to work together to do what can be done are positive actions that will improve the lake. It is a lot of little things that will make improvement based upon sound data. It is based on hard facts.

### 4) **Legislation**

Jenn reviewed the legislative commissions that are ongoing or concluded.

1. The Flood Commission recommendations were reviewed.
2. The Stormwater Commission is ongoing and issued their interim report in November.
3. The Land Use Commission issued their interim report in November and it is still gathering information.
4. The Groundwater Commission has been extended.

Jody Connor reviewed legislation that may be coming.

1. Ban on phosphorus in household detergents to now include automatic dishwasher detergents.
2. Increase funding for milfoil control. Boat registrations have declined in the last few years.
3. An LSR (Legislative Service Request) has been drafted relative to removing invasive aquatic growth. This includes native vegetation removal.

Darlene Forst reviewed Shoreland Rules. The goal is to have the re-adoption package completed by the end of December for a continuance of the rules. There are small changes.

There has been opposition to the Shoreland Protection Act and there will be an attempt to get legislation in this session to make changes. DES will be proposing legislation to make some necessary changes after 6 months of working with the new law. She reviewed the changes being proposed.

There is an LSR now relative to the applicability of the CSPA.

**5) Follow Up to Mascoma Lake Visit – Jim Haney and Amanda Murby, UNH**

Amanda Murphy gave an update of what was found on the Lake Mascoma visit. She is looking closely at cyanobacteria and microcystins. BMAA, which is an amino acid that is produced by cyanobacteria, is suspected to be linked to ALS or Parkinson's disease and is being tested for in lake water. They are finding some affected groups are clustered near lakes. The question to consider is – is there a need to monitor toxins produced by cyanobacteria. The studies are showing they are detrimental to our health in many different ways. The larger question is - how could this be implemented into routine monitoring?

**6) HB710 Commission – Mitch Kalter**

Mitch reported 17 months have passed since the Commission was established and the final report was submitted on November 1, 2008. The overview during the process was to establish some practical and usable findings and recommendations and that was accomplished. The 710 commission's report was distributed to the committee. The 710 commission produced 5 legislative recommendations and 7 policy related recommendations. The LMAC reviewed and discussed the following:

**Legislative Recommendations:**

**Legislative Recommendation 1:**

Any existing lease agreement or lease assignee shall only be renewed for lease terms of 5 years provided that the lessee or lease assignee has met all statutory conditions and is compliant with all state and federal permits. Under special circumstances, lease terms can be other than 5 years upon approval by the Long Range Capital Planning and Utilization Committee, Governor and his/her Executive Council.

**Legislative Recommendation 2:**

Portions of real estate owned by the State that are on the shores of public waters, as defined by RSA 271:20, may be leased for private, non-commercial use by owners of adjacent residentially developed properties that are either fully constructed; or the property owner can demonstrate that he or she has incurred substantial liabilities in a reasonable, good faith reliance on the absence of a controlling law or regulation, sometimes called vested rights, prior to January 1, 2011. The following thresholds shall constitute proof that the adjacent property owner has vested rights:

- a. The activities are specifically identified in a building permit application that has been approved by the municipal board(s) or official having authority over building permits prior to January 1, 2011; or
- b. At a minimum a concrete foundation (or its equivalent) for the primary structure was installed prior to January 1, 2011.

**Legislative Recommendation 3:**

Any lease requests for railroad property for the sole stated purpose of installing a dock or mooring, in accordance with 228:57-a, shall additionally be subject to the procurement and delivery of a Dock Permit issued by the Department of Environmental Services or a Mooring Permit issued by the Department of Safety. This shall be established as a condition precedent to the effectiveness of all such lease agreements. Language shall be included in the lease agreement stating that if a dock or mooring permit is denied or revoked, the lease shall be terminated.

**Legislative Recommendation 4:**

Notwithstanding the above, where an applicant can demonstrate the intent to provide a public use or benefit through a lease or other agreement to utilize state lands on the shores of public waters they may be allowed to do so upon review and approval by the Long Range Capital Planning and Utilization Committee, Governor and his/her Executive Council, provided they proceed through the appropriate statutory review process including, but not limited to that in RSA 4:40, 4:39-a, 4:39-c, 481:3-a, 482-A, and 483-B.

**Legislative Recommendation 5:**

The existing Department of Transportation leases along the railroad corridor be priced at \$30.00 per linear foot effective upon the renewal of any existing lease or upon the implementation of any new lease after the effective date of this legislation. Every 5 years all leases shall be subject to a Consumer Price Index (CPI) adjustment at the time of lease renewal.

**Policy Recommendations:****Policy Recommendation 1:**

NHDES leases include several categories and have various anomalies particularly regarding their pricing, should be addressed by that Agency and with legislative recommendations on how to align their lease prices with those of other Agencies should be proposed to the House Resources, Recreation and Development Committee during the 2009 legislative session.

**Policy Recommendation 2:**

The Agencies issuing the leases and licenses shall advise the lessee in writing that the granting of the lease/license does not reduce the public right to use the public waters.

**Policy Recommendation 3:**

The Agencies issuing the wetlands and mooring permits shall advise the lessee in writing that the granting of lease/license does not reduce the public right to use the public waters.

**Policy Recommendation 4:**

The Long-Range Capital Planning and Utilization Committee should make their agendas and minutes more readily available to the public and distributed directly to interested parties including municipalities in which surplus land requests are being deliberated.

**Policy Recommendation 5:**

The (Council on Resources and Development) CORD application form as well as the Lakes Management Advisory Committee (LMAC) and Rivers Management Advisory Committee (RMAC) checklist should be revised to assure that adequate knowledge and review of the public access/water quality component is addressed of any applicable surplus land review request.

**Policy Recommendation 6:**

Where possible and prior to disposal, the State should pursue and secure opportunities to provide public access along that frontage that it currently owns or maintains.

**Policy Recommendation 7:**

The Governor's Office has been working with various state agencies to determine more efficient interagency customer service and better coordinated permitting. The purpose of the effort is to develop and implement ways in which state agencies can work more effectively as a team to better serve the public for projects that involve multiple state Agencies. The intent of this effort could also be applied to the surplus land review process, the agencies should work collaboratively to determine a better, more appropriate time and process for some wetlands permitting requirements to be considered, including, but not limited to, water quality, steep slopes, and rare and endangered species.

**III. Other Business:****Member Updates:**

Chairman O'Brien mentioned that the NH Lakes Association 2008 Lake and Pond Survey of its membership produced this ranking of the following issues:

Very important: Non-point source pollution and exotic aquatic weeds and other organisms

Important: Balanced and safe recreational use of the lakes and point source pollution

Somewhat important: Ground and surface water extraction

Jacque provided an update regarding the Alteration of Terrain Rules process. At one point, a section on anti-degradation was included in the proposed rules. However, the construction industry has requested to have a closer look at what 'anti-degradation' means and how will it effect them. This section has now been removed from the proposed rules. More time will be spent investigating it and then include it again in the future. Jacque suggested that Ken Kimball, RMAC Chair and Phil O'Brien, LMAC Chair, co-sign a memo that would be sent to Commissioner Burack saying we understand that this request has been made and we concur with the department's response. However, we want anti-degradation to be revisited and we do want to make you aware of our support for it being included in the proposed administrative rules for the Alteration of Terrain program. There was consensus among the committee to proceed with this approach.

Chairman O'Brien noted the Watershed Conference held last Saturday was well done.

➤ ***Motion to adjourn the meeting was made by Mitch Kalter and seconded by Diane Hanley. Motion passed unanimously. The meeting concluded at 12:12 PM.***